

LICENSING ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 4: Clubs

General

114. This Part provides for arrangements for qualifying clubs (as defined in section 61), (such as the British Legion, working men's or cricket or rugby clubs) which meet specified criteria to carry on certain licensable activities at their premises. In this Act such activities are called "qualifying club activities". Such clubs are treated differently from other venues because they carry on activities from private premises (to which access is accordingly restricted) and because alcohol and regulated entertainment are provided otherwise than for profit.
115. This Part establishes a system of club premises certificates, issued by the relevant licensing authority, which authorise a qualifying club to carry on qualifying club activities. Qualifying clubs have a special status under licensing law; clubs holding certificates will be exempted from the requirement for any member or employee to hold a personal licence to supply or sell alcohol to members or guests. The general offence of supplying alcohol to people under 18 applies in clubs as it does elsewhere (see commentary on Part 7 below).
116. Applications for club premises certificates, like those for premises certificates, will be made by submitting the required documents to the licensing authority (namely, the operating schedule, a plan of the premises and a copy of the club's rules). The operating schedule sets out the activities proposed to be undertaken, the planned hours of opening, and the arrangements the club proposes taking to promote the licensing objectives (see section 4).
117. An application for a club premises certificate is subject to provision about advertisement and representations, similar to that for an application for a premises licence (see paragraph 60 above).

Section 60 – Club premises certificate

118. This section defines "club premises certificate" for the purposes of the Act.

Section 61 – Qualifying clubs

119. This section provides that a club is a qualifying club, in relation to a qualifying club activity, if it satisfies the general conditions (see section 62) and if, in relation to the supply of alcohol to its members or their guests, it also satisfies the additional conditions (see section 64).

Section 62 – The general conditions

120. This section sets out 5 general conditions for a club to be a qualifying club. They are that:
- nobody can be admitted as a member without an interval of at least two days after their nomination or application for membership;
 - a person who is admitted as a member other than by prior nomination or application must wait at least two days before enjoying the privileges of membership;
 - the club is established and conducted in good faith as a club (as to which, see section 63);
 - the club has at least 25 members;
 - no alcohol is supplied, or intended to be supplied, on the club premises except by or on behalf of the club.

Section 63 – Determining whether a club is established and conducted in good faith

121. This section sets out the matters that must be taken into account in determining whether a club satisfies the condition of being established and conducted in good faith. These matters include restrictions on
- the club's freedom to purchase alcohol;
 - how money or property belonging to the club is used;
 - giving members information about the club's finances;
 - the club's accounts; and
 - the nature of its premises.
122. If a licensing authority determines that a club does not satisfy this condition, it must notify the club accordingly and give reasons for its decision.

Section 64 – The additional conditions for the supply of alcohol

123. This section sets out the three additional conditions that a club must satisfy if it is to be a qualifying club in relation to the supply of alcohol to members and their guests. These conditions are that the purchase and supply of alcohol should be managed by a committee, that nobody should receive at the expense of the club a commission or percentage deriving from purchase of alcohol, and that nobody should receive a pecuniary benefit from the supply of alcohol by the club to its members or their guests.

Section 65 – Industrial and provident societies, friendly societies, etc.

Section 66 – Miners' welfare institutes

124. These sections provide that, for the purposes of the Act, registered industrial and provident societies, registered and incorporated friendly societies and miners' welfare institutes will be treated as satisfying certain of the general conditions and additional conditions for being a qualifying club if certain requirements relating to their constitution and management are met. The effect of the provisions of these sections is that such bodies may apply for a club premises certificate.

Section 67 – Associate members and their guests

125. This section provides that references to club members' guests are to be taken to include associate members of the club, and associate members' guests. So such persons can

have the benefit of licensable activities or qualifying club activities provided on club premises.

Section 68 – The relevant licensing authority

126. For the purposes of this Part, the “relevant licensing authority” is the authority in whose area a club’s premises are situated (or mainly situated). (If the premises straddle two or more areas equally, applicants can nominate one of the authorities in question to act as the relevant licensing authority.) The effect of this section is to determine the authority to which an application for a club premises certificate may be made by a qualifying club.

Section 69 – Authorised persons, interested parties and responsible authorities

127. This section defines the terms ‘authorised persons’, ‘interested party’ and ‘responsible authority’. The significance of designation as an ‘authorised person’ is that it confers a role in the inspection of premises in connection with their use for licensable activities. An interested party or responsible authority may make representations to a licensing authority in relation to the grant, variation or review of a club premises certificate.
128. This Part also provides that applicants for club premises certificates must give notice to responsible authorities and advertise applications in a manner likely to bring them to the attention of the interested parties.

Section 70 – Other definitions relating to clubs

129. This section defines ‘secretary’ for the purposes of this Part of the Act as any person performing the duties of a secretary.

Section 71 – Application for club premises certificate

130. Subsections (1) to (4) provide that applications for a club premises certificate for premises which are occupied by and used for the purposes of a club may be made by a qualifying club to the relevant licensing authority (see section 68). Applications are to be made in the form prescribed in regulations made by the Secretary of State and accompanied by a fee similarly prescribed.
131. Subsection (5) provides that the operating schedule will set out various details relating to the operation of particular club premises. Those details include the qualifying club activities to be carried out, the proposed hours of those activities and other times when it is proposed that the premises will be open to members and their guests, whether, where the qualifying club activities include the supply of alcohol, the supplies will be for consumption on or off the premises or both and a statement of how it is intended to promote the licensing objectives. The significance of the operating schedule is that if the application for the club premises certificate is granted, the details will be incorporated into the certificate, which will set out the permitted activities and the limitations on them.
132. Subsection (6) provides that the Secretary of State must make regulations setting out how applications must be notified and advertised, and specifying when interested parties and responsible authorities can make representations to the authority.

Section 72 – Determination of application for club premises certificate

133. Subsections (1) and (2) provide that unless relevant representations are made in respect of an application for a club premises certificate, a licensing authority must grant a certificate in accordance with any such application which is duly made. That certificate will be subject to conditions consistent with those included in the application by the applicant in the operating schedule, and subject to the mandatory conditions set out in sections 73 and 74.

134. Subsection (3), together with subsections (6) to (8), provides that where relevant representations are made, licensing authorities are required to hold a hearing. In order for representations to be 'relevant' they must have been made by an interested party or a responsible authority (see the definitions in section 69) and they must relate to the likely effect of the grant of the certificate on the promotion of the licensing objectives. If the representations are made by an interested party there is a further requirement that the licensing authority does not consider them to be frivolous or vexatious (but if it does, the authority is to explain its decision to the person who made the representations). The need for a hearing can be dispensed with by agreement of the authority, the applicant for the certificate and all of the parties who have made relevant representations.
135. Subsection (4) provides that when a hearing is held (or dispensed with as indicated above), the licensing authority must, if it considers it necessary for the promotion of the licensing objectives, attach conditions to any certificate granted, rule out any of the qualifying club activities applied for, or reject the application. Otherwise the licensing authority will grant the certificate in the terms sought in the application (together with any mandatory conditions).
136. Subsection (10) provides that a licensing authority may, within the same certificate, impose different conditions on different parts of the premises, or impose different conditions in relation to different qualifying club activities.

Section 73 – Certificate authorising supply of alcohol for consumption off the premises

By virtue of this section, a club premises certificate may authorise the supply of alcohol by a club to its members for consumption off the premises only in certain circumstances. The sale by retail of alcohol to a guest of a member for consumption off the premises is not a qualifying club activity.

By virtue of this section -

- A club premises certificate may not authorise the supply of alcohol for consumption off the premises unless it also authorises its supply to members for consumption on the premises
- A club premises certificate authorising the supply of alcohol for consumption off the premises must include three conditions. These are:
 - (i) the supply must be made at a time when the premises are open for the purposes of supplying alcohol, in accordance with the club premises certificate, to members of the club for consumption on the premises
 - (ii) any alcohol supplied for consumption off the premises must be in a sealed container
 - (iii) any supply of alcohol for consumption off the premises must be made to a member of the club in person.

Section 74 – Mandatory condition: exhibition of films

137. Where a club premises certificate authorises the exhibition of a film this section makes it mandatory for a condition to be included in the certificate requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 or by the licensing authority itself. When the Act was passed the only body designated under section 4 of the Video Recordings Act 1984 was the British Board of Film Classification.

Section 75– Prohibited conditions: associate members and their guests

138. This section provides that no conditions attached to a club premises certificate may prevent the sale by retail of alcohol or the provision of regulated entertainment to

associate members of the club or their guests, if those activities are permitted by the rules of the club.

Section 76– Prohibited conditions: plays

139. Under this section, in the case of a club premises certificate authorising the performance of a play (see Schedule 1), licensing authorities will not be able to attach conditions relating to the nature of the play performed or the manner of its performance, unless they are justified as a matter of public safety. This section reproduces for England and Wales the effect of section 1(2) of the Theatres Act 1968.

Section 77 – Grant or rejection of application for club premises certificate

140. By virtue of this section a licensing authority which grants or refuses a club premises certificate must notify its decision to the applicant, to any person who made representations and to the chief officer of police for the area in which the premises are situated. If the application is granted, the licensing authority must also notify those parties of any steps it took in response to relevant representations and give its reasons. It must issue the club premises certificate, and a summary of that certificate, to the applicant. If the application is rejected, the licensing authority must notify those parties of the reasons for its decision.

Section 78 - Form of certificate and summary

141. This section makes provision for a club premises certificate and the summary of that certificate to be in a form prescribed in regulations made by the Secretary of State. Subsection (2) lists the basic requirements which those regulations must include as to the content of the certificate. Under section 94, the summary must be displayed at the relevant premises.

Section 79 – Theft, loss etc. of certificate or summary

142. Subsection (1) provides that a club may apply to the licensing authority for a copy of a club premises certificate or summary if that certificate or summary has been lost, stolen, damaged or destroyed. Subsection (3) provides that if the licensing authority is satisfied of the veracity of such an application, it must then issue a certified copy of that certificate. Where a certificate has been lost or stolen, there is an additional requirement that the club has reported this to the police. A fee may be prescribed for the issue of replacement documents. The Act applies in relation to a copy in the same way as it applies to the original.

Section 80 – Period of validity of club premises certificate

143. By virtue of this section a club premises certificate has effect until it is withdrawn (see section 88 and 90) or it lapses on surrender by the club (see section 81). Subsection (2) provides that a club premises certificate does not have effect during periods of suspension.

Section 81 - Surrender of club premises certificate

144. This section provides that a club may voluntarily surrender its club premises certificate by returning it to the authority accompanied by a notice of surrender. If it is impractical to return the certificate (e.g. where it has been lost), a statement to this effect must be sent with the notice of surrender. A club premises certificate lapses when the authority receives the notice of surrender.

Section 82 – Notification of change of name or alteration of rules of club

145. Under this section, the secretary of a club must notify the relevant licensing authority of any change in the club's name or its rules. Notification of such a change must be

accompanied by the certificate (unless that is impracticable and then a statement of the reasons as to why that is the case must be provided) and any fee that may have been prescribed. The licensing authority must amend the club premises certificate to record any such change, but a certificate may not be amended under this section so as to change the premises to which it relates. Failure to notify the authority of such a change within 28 days is an offence.

Section 83 – Change of relevant registered address of a club

146. Under this section, the secretary of a club may notify the relevant licensing authority of any change in the club's address, and must do so if the club ceases to make use of the address which it has given as its relevant registered address. Notification of such a change must be accompanied by the certificate (unless that is impracticable and then a statement of the reasons as to why this is the case must be provided) and any fee that may have been prescribed. The licensing authority must amend the club premises certificate to record any such change. Failure by a club to notify the authority of a change of address when it has to do so is an offence.

Section 84 – Application to vary club premises certificate

Section 85 – Determination of application under section 84 and

Section 86 – Supplementary provision about applications under section 84

147. Under these sections a club can apply, in the prescribed form and manner, to vary its club premises certificate in any way other than to vary substantially the premises to which it relates. Any such application may be subject to the payment of a fee and is subject to regulations under section 71 relating to advertising requirements. The application must also be accompanied by the club premises certificate (unless that is impracticable, in which case a statement of reasons must be provided).
148. Under section 85 the licensing authority must make the variation as applied for unless relevant representations are made, in which case a hearing must be held. In order for representations to be 'relevant' they must have been made by an interested party or a responsible authority (see the definitions in section 69) and they must relate to the likely effect on the promotion of the licensing objectives if the application were to be granted. If the representations are made by an interested party there is a further requirement that the licensing authority does not consider them to be frivolous or vexatious (but if it does the authority is to explain its decision to the person who made the representations). The need for a hearing can be dispensed with by agreement of the authority, the applicant for the variation and all of the parties who have made relevant representations.
149. By virtue of subsection (3) of section 85, in any case where relevant representations have been made, the licensing authority must, if it considers it necessary for the promotion of the licensing objectives (see section 4), modify the conditions of the certificate or reject the application for variation. Otherwise, the licensing authority must grant the variation in the terms sought (subject to the mandatory conditions). The authority must notify its decision to the applicant, the police and any person who has made relevant representations, and must give reasons for its decision. A variation of a club premises certificate may impose different conditions on different parts of the premises, or impose different conditions in relation to different qualifying club activities.

Section 87 – Application for review of club premises certificate

150. Subsections (1) to (3) make provision for an interested party, responsible authority or a member of the club in question to apply (in such manner and form as may be prescribed and subject to any regulations made about requirements as to notification and advertisements) to a licensing authority for a review of the club premises certificate.

Subsections (4) to (7) provide that the authority can at any stage reject a ground for review in an application if it is not relevant to any of the licensing objectives, or (where the application is made by an interested party) if it is frivolous, vexatious or repetitious. (A ground for review is a repetitious if it is identical or substantially similar to a ground for review already considered by the authority in a previous review, or in the determination of the application for grant of the certificate, and a reasonable period has not passed since that time).

Section 88 – Determination of application for review and

Section 89 – Supplementary provision about review

151. Under the provisions of these sections the licensing authority must hold a hearing to consider and determine the application for a review and any relevant representations made in respect of it. Having regard to those matters, the authority must, if it considers it necessary for the promotion of the licensing objectives modify the conditions of the certificate or the activities which it covers, suspend the authority of the certificate for a period not exceeding 3 months or revoke the certificate. Otherwise the certificate will not be altered.
152. **Section 88** provides that for representations to be relevant they must relate to one or more of the licensing objectives and be made by the club, a responsible authority or an interested party. If made by an interested party, the authority must be satisfied that they are not frivolous or vexatious. If the authority considers that they are, it must inform the party making the representations of its decision. The authority must notify the applicant, the club, any person who made relevant representations and the police of its decision and its reasons.
153. A local authority that is both the relevant licensing authority and a responsible authority – for example, where it carries out the functions of the local environmental health authority – may apply for a review in its capacity as a responsible authority and determine that application.

Section 90 – Club ceasing to be a qualifying club

154. A club which ceases to meet the criteria set out at sections 61, 62 and 63 and 64 will have its certificate withdrawn by the licensing authority. Where a certificate is withdrawn because the club's membership has fallen below the required minimum (currently 25), the withdrawal will not have effect until three months after the authority gives notice and does not have effect if, by the end of those three months, the membership has risen to at least the required minimum.
155. A justice of the peace may issue a search warrant authorising a constable to enter club premises (if necessary using force) to search them if he is satisfied that a club holding a club premises certificate ceases to meet the criteria necessary to be a qualifying club and evidence of such fact may be obtained at the club premises.

Section 91 – Form etc. of applications and notices under Part 4

156. This section allows for the detail of the form, manner and content of applications, and any accompanying documents, to be set out in regulations.

Section 92 – Fees

157. Clubs may be required by regulations to pay an annual fee to the licensing authority, the amount and due date of which may be prescribed, or fees in relation to any applications (other than an application for a review) or notices made under this Part.

Section 93 – Duty to provide licensing authority with club premises certificate

158. A club must produce the certificate at the request of the licensing authority. Failure to do so without reasonable excuse is an offence.

Section 94 - Duty to keep and produce certificate

Section 95 - Provision supplementary to section 94

159. Clubs must ensure that the certificate is held on the relevant premises, and that a summary of the certificate and notice of the nominated individual responsible for it on the premises are displayed prominently. Failure to comply with those provisions is an offence.
160. A police officer or authorised person (see section 69) may require production of the certificate; failure to produce it is an offence.

Section 96 - Inspection of premises before grant of certificate etc.

161. This section makes provision for a constable authorised by the chief officer of police or an authorised person (see section 69) to enter premises to which an application for a club premises certificate relates, or to which an application for a variation or a review of the certificate relates and inspect those premises, having given the club 48 hours notice. It is an offence to obstruct an authorised person exercising the power this section confers. It is already an offence under the Police Act 1996 to obstruct a police officer in the course of his duty.

Section 97 - Other powers of entry and search

162. This section provides that a constable may enter and search club premises where he has reasonable cause to believe that an offence in respect of controlled drugs has been, is being, or is about to be, committed there or there is likely to be a breach of the peace.